

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

MICHAEL JOHN BUI,

Civil No. 08-1253 (DSD/SRN)

Plaintiff,

v.
JOHN Q. McSHANE, Judge of District
Court, and EDWARD TOUSSAINT, Chief
Judge of Court of Appeals,

**REPORT AND
RECOMMENDATION**

Defendants.

This matter is before the undersigned United States Magistrate Judge on Plaintiff's "Application To Proceed Without Prepayment of Fees," (Docket No. 2), by which he is seeking leave to proceed in forma pauperis, ("IFP"), as permitted by 28 U.S.C. § 1915(a)(1). The matter has been referred to this Court for report and recommendation under 28 U.S.C. § 636 and Local Rule 72.1. For the reasons discussed below, the Court will recommend that Plaintiff's IFP application be denied, and that this action be summarily dismissed pursuant to 28 U.S.C. § 1915(e)(2)(B)(iii).

I. BACKGROUND

Plaintiff alleges that in 2007 he filed a lawsuit against four financial institutions in the state district court for Hennepin County, Minnesota. One of the defendants in that action apparently brought a counterclaim against Plaintiff. Several months after Plaintiff filed his state court lawsuit, his complaint was summarily dismissed without prejudice. The defendant who filed the counterclaim was later granted summary judgment against Plaintiff. Both of the orders in the state court action, (i.e., the order dismissing the complaint, and the order granting summary judgment), were entered by District Court Judge John Q.

McShane.

After the order granting summary judgment was entered in Plaintiff's state court lawsuit, he filed an appeal. Several weeks later, the appeal was summarily dismissed by the Minnesota Court of Appeals. The order dismissing the appeal was signed by Edward Toussaint, the Chief Judge of the State Court of Appeals.

Plaintiff is now attempting to sue Judge McShane and Judge Toussaint for allegedly mishandling his state court action and appeal. He has not identified any legal basis for his current lawsuit, but merely alleges that "both defendants were no good judges." Plaintiff's complaint does not describe the relief he is seeking in this matter.

II. DISCUSSION

An IFP application will be denied, and the action will be dismissed, if the plaintiff is seeking relief against a party who is immune from suit. 28 U.S.C. § 1915(e)(2)(B)(iii). In this case, the Court finds that Plaintiff's claims against both of the named Defendants are barred by the doctrine of judicial immunity.

It is well-settled, under both federal law and Minnesota state law, that judges are completely immune from civil lawsuits based on alleged wrongful acts or omissions related to the performance of their judicial functions. Pierson v. Ray, 386 U.S. 547, 553-54 (1967); Stump v. Sparkman, 435 U.S. 349, 355-57 (1978); Mireles v. Waco, 502 U.S. 9, 11 (1991); Liles v. Reagan, 804 F.2d 493, 495 (8th Cir. 1986). See also Hoppe v. Klapperich, 224 Minn. 224, 234 (1947) ("it is unquestionable, and has been from the earliest days of the common law, that a judicial officer cannot be called to account in a civil action for his determinations and acts in his judicial capacity, however erroneous or by whatever motives prompted"), quoting Stewart v. Case, 53 Minn. 62, 66 (1893).

Plaintiff obviously is attempting to sue the two named Defendants in this case for actions they allegedly undertook while serving in a judicial capacity, and performing judicial functions. Therefore, Plaintiff's claims against Defendants are clearly barred by the doctrine of judicial immunity.

Because both of the named Defendants are immune from Plaintiff's current lawsuit against them, the Court will recommend that Plaintiff's IFP application be denied, and that this action be summarily dismissed, pursuant to 28 U.S.C. § 1915(e)(2)(B)(iii).

III. RECOMMENDATION

Based upon the foregoing and all of the files, records and proceedings herein,

IT IS HEREBY RECOMMENDED that:

1. Plaintiff's "Application to Proceed Without Prepayment of Fees," (Docket No. 2), be DENIED; and
2. The action be summarily DISMISSED pursuant to 28 U.S.C. § 1915(e)(2)(B)(iii).

Dated: May 6, 2008

s/ Susan Richard Nelson
SUSAN RICHARD NELSON
United States Magistrate Judge

Under D. Minn. LR 72.2(b) any party may object to this Report and Recommendation by filing with the Clerk of Court, and serving all parties by **May 21, 2008** a writing which specifically identifies those portions of this Report to which objections are made and the basis of those objections. Failure to comply with this procedure may operate as a forfeiture of the objecting party's right to seek review in the Court of Appeals. This Report and Recommendation does not constitute an order or judgment of the District Court, and it is therefore not appealable to the Circuit Court of Appeals.